An ACCOUNT at Large, of the PROCEEDINGS at The Sessions-House

In the *Old-Bayly*, on the 24 of *November* 1681. In Relation to the Bill of *High Treason*, prefer'd against the

Earl of Shaftsbury,

Which was foun'd *Ignoramus*.

Giving an Account *of the* Jury, *the* Evidence, *the* Paper *read in Court, and all the most Remarkable Passages that hapned during the whole* Proceeding.

AS ALSO

The Proceedings at the Kings-Bench-Bar, at *Westminster*, on the 28 past: giving an Account of the Bailing of the Right Honorable *Anthony* Earl of *Shaftsbury*, *William* Lord *Howard* Baron of *Escreik*: and also *Edward Whitaker*, *John Wilmore*, and *Samuel Wilson*; with the Names of such Persons of Honour, and others, that became Sureties: together with many other Remarkable Passages.

ON the 24 day of *November* 1681. by virtue of a Special Commission of *Oyer* and *Terminer*, a Court was held at the Sessions-House in the *Old-Bayly*, where most of the Judges being present, the Jury summoned to attend, were called, being about 40 in Number, all worthy Gentlemen and substantial Citizens, out of which these following were Sworn, according as the Law in such Cases requires, viz. Sir *Samuel*

el Bernardiston, Foreman, *Thomas Papillion*, Esq; *John du Bois*, Esq; Mr. *Hearle*, *Edward Rudg*; *Humphry Edwin*, *John Morrice*, *Michael Godfrey*, *Edmund Harrison*, *Joseph Wrich*, *John Cox*, *Thomas Shepherd*, *Thomas Parker*, *John Flavel*, *Leonard Robinson*, *William Empson*, *Joseph Richardson*, *John Lane*, Mr. *Kenrick*, Mr. *Hall*; After the Jurors were Sworn and had taken their Places, and the Commission by which the Court sate, Read; the Lord Chief Justice *Pemberton* told them, Though he expected the Charge might be given before he came (it not being usual for him to give it in that Court,) but finding it was not delivered, he thought it very convenient, for their better Information, to let them understand what they were to Enquire into. After which his Lordship proceeded to open the Statutes of the 25 of *Edward* the III. and that of the 13 of His present Majesty, laying open from Point to Point, the true intent and meaning of the said Statutes, and then told them, That by Virtue of the Commission by which they were Impannell'd and Sworn Jurors, they were to Inquire of all Treasons, Misprisions of Treason, Fellonies and the like; and that they were to find according to the Evidence that should be given in behalf of the King, and that unless they knew any thing of their own certain knowledge, they were not to question the Credit of the Witnesses, *&c.*

After which an Indictment of High-Treason against *Anthony* Earl of *Shaftsbury* was read, the purport of which was, That he the said *Anthony*, Earl of *Shaftsbury*, as a false Traytor of our Sovereign Lord the King, had VVilfully, Maliciously and Trayterously Conspired and Imagined to compass the Death of our Sovereign, him to Depose, Murther and put to final Destruction, by Combining with several False Traytors to raise Rebellion, and Levy VVar within His Majesties Dominions, and that in Order thereunto several Consults had been held, not only at his own House, but likewise in several other places within the City of *London*, where, by several express words, the same had been signified.

After the Indictment was read, the Jury went out to consider of the Coppy of their Oath, and to conclude about the Examination of the VVitness, then returning they made it their Request to the Court, That they might have the Examination of the VVitnesses in private, by reason several of them were not otherwise well satisfied in their Oath, which expressed That they should keep their own and the Kings Secrets, which they said they could not do, if a Publick Examination was made; Mr. *Goafley*, one of the Jury Declaring, That it had not a little troubled him, That the Evidence upon the Tryal of *Plunket*, were admitted to stand together to hear each others Evidence; he being upon the Jury that found the Bill against him; but the Kings Council opposing this their Request, the Court told them, It could not be granted; for that it was the usual Custom, some years since, to Examine all Evidence in Court, but it growing too tedious, they were forced to dispence with their Examination in private; Then they desired, That if they might not Examine them in private, that it might be Recorded That their Request was denyed in that particular; but the Court answered, That they could not Record any such thing, but that there were VVitnesses enough to take notice of what had passed; but that they would order the VVitnesses to be put apart, if they desired it, and brought one by one, and after they had given their Evidence they should again Examine them, and ask them any Lawful Questions they pleased; After which they desired to have the VVarrant of Commitment, which the Court told them could not be had, for

that

the Lieutenant of the Tower would be ſure to keep That to indemniſie himſelf: and it was not in their power to oblige him to deliver it, then they acquieſcing with the pleaſure of the Court, the Kings Counſel ordered the VVitneſſes to be Sworn, the firſt of which was Mr. *Brathwaite* one of the Clerks of the Council, who ſwore, that the Paper he then produced in Court, was the ſame Paper that was delivered him by Mr. *Gwin*, another of the Clerks of the Council, who was ſent to ſearch the Earls Papers on the 2 of July, at which time he was Committed, and That he delivered it into the poſſeſſion of Mr. Secretary *Jenkins*, not permitting any before to have it in their Poſſeſſion from the time it was delivered to him; Next Mr Secretary *Jenkins* gave Evidence, That he knew it to be the ſame Paper that was delivered to him by Mr. *Brathwaite*; Then Mr. *Gwin* being Sworn, Declared, That he being ſent by Order of Council to ſearch the Earls Papers and having received the Keys of his Cloſet, found the ſaid Paper amongſt ſeveral others in a Velvet Bag, and afterwards put it into a Trunk with the reſt of the Papers, and by the Earls Order ſet his own Seal upon it, and cauſed it to be brought to the Council Chamber.

Then the Court gave Order for the Reading the ſaid Paper, which was done accordingly, the Subſtance of it being, That there had of a long time been and now was, a Helliſh PLOT carried on by the Papiſts to deſtroy the Proteſtants and Introduce Popery and Arbitrary Govermeht; and that it was Countenanced, Abetted and Incouraged by *J. D.* of *Y.* who having moſt of the Places of Preferment and Truſt, as well Eccleſiaſtical as Civil, at his own diſpoſal, he diſpoſed of them to whom he pleaſed, to the great ſtrengthning of his Party and Incouragment of the Papiſts; whoſe hopes ſolely depended on him: and that the often Prorogations and Diſſolutions, were occaſioned by reaſon they endeavoured to hinder this Inundation of Popery. That the ſaid D. had waſted the Ammunition and Treaſure of the Nation, and that they were reſolved to have a Bill paſſed to expel him the Kingdom, and Exclude him from the Succeſſion to the Crown, *&c.* After which, it appearing, as if it had been written to ſome perſon, it went on to Counſel him, not to forget his Solemn Promiſe to all true Proteſtants, nor deſiſt from Subſcribing to what was under-written, which was a kind of an Aſſociation, the Subſtance of which follows:

I A.B. Promiſe and Vow to defend the Proteſtant Religion againſt Popery, and all Innovations upon the Liberty of the Subject, and all Arbitrary proceedings: That J. D. *of* Y. *ſhould be Depoſed in regard he has declar'd for Popery, and That they would by force deſtroy all ſuch as ſhould oppoſe or hinder this their Solemn Aſſociation, and that leaſt the D. ſign ſhould be hindered by Giddyheaded, or ſelf ended Perſons; They ſhould apply themſelves to the Parliament, and be ſubject in all things to ſuch Officers as they ſhould think fit to ſet over them, &c.*

After this the Evidence were Sworn one by one, as they were called, the next that was Sworn, after thoſe that were before mentioned was *John Booth*, who gave Evidence, that being acquainted with Captain *Wilkinſon*, and having frequent diſcourſe with him about divers affairs, eſpecially about his going with him to *Carolina*, he told him, there would be advancement ſufficient at home for ſuch men as he was, for he would ſee ſtrange Alterations e're long, and that if he would provide himſelf a Horſe and Arms, and Liſt himſelf under Him, he would give him a Horſe for his Man, for as much, as he was to Command a Troop of 50 for the Earl; and af-

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ter ſuch like Diſcourſes having found him pliable, he introduced him into the Earls preſence, who amongſt other things told him, That he had peruſed the Liſt of the Members choſen to ſerve in Parliament, and found that they were ſuch as would inſiſt upon the Bill for Excluſion of the D. of Y. upon the Repealing the 35 of *Eliſabeth*, and the bringing a Bill, for the Uniting the Proteſtant Diſſenters. In which they were ſure to be oppoſed, by which he foreſaw a Diviſion would Ariſe, and therefore all the Members would come Armed, and well Attended, himſelf being to have the Attendence of 50 Gentlemen, which he deſigned ſhould be Commanded by Captain *Wilkinſon*, and every one of them to to have his Man; and that if the King would not comply with their Demands, they would oblige him to it by Force, for the greateſt part of the Nation were on their ſide, and although he had called the Parliament at *Oxford*, thinking to over-Awe them with his Guards; yet their Force would far exceed them, upon which, being asked, Whether theſe Men were Liſted? he ſaid, Yes, and that they lay about *London* concealed, till ſuch time as they ſhould receive Orders to repair to *Oxford*; but the ſurpriſing News of the Diſſolution of the Parliamen, which was not ſuſpected ſo ſoon, cauſed them to diſperſe; he farther Swore, That the Earl declared, That the King had a deſign to bring in POPERY; and That he was a great Encourager of Papiſts.

Brian Hains depoſed, That the Earl of *Shaftsbury* told him, That the King was a man of no Faith, and therefore not to be Truſted, That he was an encourager of Popery, and that he might be depoſed, if he refuſed to comply with his Parliament; and, That there was a deſign on foot, to extirpate the Royal Family, and turn the Kingdom into a Common-wealth, after the manner of *Holland*, when as the People might enjoy more Liberty, and live Happier; That the Earl (upon ſome diſcourſe about his Majeſty) asked him, Whether he thought there was no other Family in *England* that had right to the Crown? to which he anſwered, He knew none: whereupon his Lordſhip replied, the D. of *B.* in right of his Mother, who deſcended of the *Plantagenets*, ought to be Baron of *Roſs*, and had as much right to it, as any of the Family of the *Stuarts*; That the Earl ordered him to draw up an Information againſt the Earl of *Danby*, to accuſe him as privy to the Murther of Sir *Edmundbury Godfrey*, telling him, That he would procure him a Pardon, and, That if the King denied to grant it, all the Nation would be up in Arms, that moſt of the people about *Wapping* and *Alderſgate*-ſtreet, would ſurely ſtand for his ſide, and farther he Depoſed, He did draw up an Information, but never Swore to it, *&c.*

John Smith being Sworn, before he gave his Evidence, deſired to ſpeak a word or two in his own Vindication, and then declared, That it had been reported he was SUBORNED: againſt which he made ſeveral Proteſtations, whereupon the Court ordered him to give his Evidence: when as he Depoſed, That he had been with the Earl ſeveral times, and that one night he ſent for him, from Mr. *Berkels* Club, and held a long diſcourſe with him about the Methods he had taken to alter the Government, and about the Meeting of the Parliament at *Oxford*, and how the deſign went on, and that he feared *Fitz-Gerald*, would turn about to the Court party, and by that means induce others to do the like: which might be diſadvantagious to the whole deſign: therefore he deſired him to keep them ſteadfaſt, he likewiſe Depoſed: That at ſeveral other times he had been to wait upon his Lordſhip, and had had Diſcourſes of the like Nature, and that ſeveral Sums of Money had been diſtributed, and large Promiſes made, *&c.* The

The other Evidences were *Edward Turbervile*, *Edward Ivie*, *John Macknamarre*, *Denis Macknamarre*, and *Bernard Denis*, who Depoſed that the Earl ſhould ſay, He would not give over till he had turned this Kingdom into a Common-wealth, after the manner of *Holland*; and that the King deſerved as much to be Depoſed as *Richard* the Second; and that as his Father had been led by a Popiſh Queen, ſo had his Majeſty by Popiſh Counſels; that ſeveral Lords who were named muſt be removed, and that the Dutcheſs of *Mazarine* was his Cabinet Counſel; that the Earl incited *Barnard Denis* to go over into *Ireland*, & bid the *Iriſh* that were his Friends, to be ready to ſtand for their Liberties, which the ſaid *Denis* Depoſed were about 400 in all of the ſame Name. And farther, That he promiſed him a Benefice, he being a Secular Prieſt, and that in the mean time he ſhould wear a Black Gown. And farther, ſome of them Depoſed, That the Earl perſwaded them to Swear againſt the Queen and the Duke of *York*, promiſing them large Rewards. That he ſaid the King was Popiſhly inclined. That they were all of them to be preferred according to their Capacities, ſo ſoon as the Deſign had taken effect; with many other particulars too tedious to recite. When theſe before-mentioned had given their Evidence, Mr. *Fitz-Gerald* was called; bnt Mr. Attorney-General ſaying there was enough, he did not appear to give Evidence.

Having thus far proceeded, the Court directed the Jury to go and conſider of what had been Sworn, and then Adjourned till after Dinner, whenas the Judges (who were Eleven in all) being ſeated, the Evidence were brought in one by one, to be Examined to ſuch particulars as the Jurors ſhould think fit, and ordered to anſwer the ſame without any Repartees, or haſty Replies; the Court declaring, That they believed the Gentlemen of the Jury ſuch, as they would not ask them any thing, but what was convenient, and to the purpoſe.

Booth being called and ſet up, he was demanded upon what account he came to have ſuch Diſcourſe with the Earl; he ſaid, by being introduced by *Wilkinſon*, and upon his recommendation that he was a man fit for ſuch ſervice. Then being asked whether he was Liſted, he replyed, yes, and that he had procured him a Stone-horſe, and furniſhed himſelf with other neceſſaries. Then he was asked whether he had not been Condemned for Clipping; and whether he had ob-

tained his Majesties Pardon to the latter? he answered in the Affirmative; but as to the former, he said he was not bound to declare. Then being asked whether he was a Minister in Orders, or whether he had a Benefice? he said he had one formerly, but not at present; and as to his being in Orders, it was nothing to the matter in question. These and many such like questions were demanded, as to time and place, when and where such discourse should happen; to which (as he said) as far as he could charge his memory, he answered; and being asked why he had not made the Discovery sooner, he said, he thought not to do it at all, for that he thought it was a matter too ponderous for him to carry on alone; but when he found there were other Witnesses to the same purpose, he thought it time to reveal his knowledge.

Dennis Macknamarra being cross Examined, and several questions put to him, where the Earl did speak such and such words, he said in his Dining-room, at his own house in *Aldersgate-street*; then was he asked where his Dining-room stood; he replyed, Up one pair of stairs on the right hand; and in that, as the Jury observed, he was mistaken, for the Dining-room at his said House, is right forward below stairs. Being asked whether any body was by when the words were spoke, or whether they were spoke aloud, or whispered; he said there was no person by, and that he spoke it alowd; but the Jurors perusing their Notes, found some variation as to that particular; the words were, that the Earl of *Shaftesbury* should say, He would take the Crown off the Kings Head and put it upon his own, and so reduce the Kingdom to a Republick.

John Smith being asked whether he went, or had not gone by any other Name, he replyed, That he being a Popish Priest, was forced to make use of sundry Names for his own security, which was the usual way of all Popish Priests; then being demanded who induced him to give his Information, he said no body, he did it voluntarily, without the least incitation thereto, and that he delivered it to Mr. Secretary *Jenkins*.

Then *Bernard Dennis* being brought in, he was examined or rather interrogated upon the Evidence he had before given, as indeed they were all. The Jury asked him how he came to be so well acquainted with the Earl of *Shaftsbury*: He said, Upon the account of the design that was carrying on, and that he had had several Conferences with his Lordship alone; and that he had told him the People of *Ireland*

were

were hardly dealt withal, and that under the Government of a Commonwealth they ſhould live far better, or to that purpoſe. Then being demanded whether he had been in *Ireland* to ſpeak to his Kindred he had formerly mentioned, he ſaid, He had made ſome of them acquainted with what was intended. Being asked whether he was to find them Arms, he ſaid, No, he was not in a condition to do any ſuch thing.

Upon theſe and ſuch-like Queſtions, were the reſt interrogated; who affirmed, that they had given their Informations (voluntarily, and without any compulſion) to Mr. Secretary *Jenkins*; and that they had no prejudice againſt the Earl, but did it upon the account of their Conſcience. Some of them being demanded, whether in any other places, or at any other time than what they had mentioned, they had heard the Earl ſpeak any treaſonable words; to which they anſwered, No, not as they remembered.

Upon the full hearing of the Witneſſes aforeſaid, about eight hours were ſpent, whenas the Court ſumming up what had been ſworn, the Jury went out to conſider of the Evidence. When upon ſome of the Witneſſes complaints to the Court, that the People had abuſed them, and they went in danger of their lives; the Lord Chief Juſtice ordered the Sheriffs, at their peril, to ſecure them with a ſufficient Guard through *Temple-bar*, and then they were out of the City: for if they came to any harm, they ſhould anſwer it, or to that effect. Whereupon the Officers of both Compters were ſent for to attend with their Javelings; who accordingly came and received them under their protection: yet could they ſcarcely defend them from the fury of the Rabble, who run after the Coach in which they were, calling them, *Tories*, *Bogtrotters*, and the like; and in *Fleet-ſtreet* endeavoured to pull them out of the Coach, *&c.*

After the Jury had conſidered the Evidence about the ſpace of an hour and half, they returned, and delivered the Bill to the Clerk; who after he had asked them whether they were all agreed, and content that the Court ſhould mend any matter or falſe Latine, altering no manner of ſubſtance, without their privity, he told the Court, That it was found *IGNORAMUS*. Upon which, Mr. Attorney General prayed the Jury might be recorded. Upon the Bill's being ſo returned, there was ſuch a Shout, not onely in the Court, but in the Yard, that there was no hearing any word for the ſpace of a quarter of an hour. When the noiſe being

pretty

pretty well filled, the Court demanded whether they did not think the words Treason? they answered they did, but could not credit the Evidence, as to that effect. And after some other words had passed, the Court Adjourned till the Fifth of *February* next. One thing more is to be observed, the shout beginning in the Sessions-house, was carried quite through the City in less than an hours time, and within two hours afterwards, Bonfires were made in most streets of the City and Liberties. The Bells rung in some places, and the Rabble obliged the Coachmen to put off their Hats to the fires, and say, God bless the Earl of *Shaftesbury*; a thing which has not been known upon any such occasion.

November 28. 1681.

THis being the last day of the Term, the Right Honourable *Anthony* Earl of *Shaftsbury*, *William* Lord *Howard* Baron of *Escrick*, Mr. *John Wilmore*, and Mr. *Edward Whittacre*, were brought from the Tower of *London* by the Lieutenant and a Guard of Halberts, in order to their being Bailed, according the Act of the 13th of his present Majesty. Whereupon Mr. *Williams* moved the Court in the behalf of the Earl, and satisfied them that Mr. Attorney General had been waited upon on that occasion; whenas the Warrant of his Commitment for High-Treason, dated the second of *July*, was read and ordered to be filed. After which his Lordship insisted upon being set at liberty without giving in Bail saying, That he had had hard measure, and had been falsely scandaled by having such things laid to his charge as he was altogether ignorant of. But the Court declaring that they could not let him at liberty without his giving Bail, his Lordship nominated his Grace the Duke of *Monmouth*, Sir *William Cooper*, Sir *John Sidnam*, *Francis Charlton* Esq; who were bound severally in the Penalties of 1500 *l.* a piece, and his Lordship in the sum of 3000 *l.* to appear the first day of the next Term, and not to depart without leave of the Court.

Next the Lord *Howard*'s two Warrants of Commitment for High-Treason were read, being dated the 14th of *June*, and ordered to be filed. His Lordship alleadged, that he ought to have had the benefit of the last Term, there being a Bill preferred against him; but the Court told him, they could take no notice of that, by reason it was withdrawn. Then his Lordship named his Bail, which were, the Right Honourable the Earl of *Kent*, the Lord *Gray*, the Lord *Gray*, and the Lord *Herbert*; the penalties being exactly as the former. Then Mr. *John Wilmore*'s Warrant of Commitment being read, and ordered to be filed, Mr. Attorney declaring he had nothing against him, his Bail were called into Court, whose names are as followeth! *James Rawlings*, *William Jones*, *Nicholas Grigson*, and *Alexander Probe*; who were bound in 1500 *l.* apiece, and himself in 3000 *l.* Then Mr. *Edward Whittacre* (whose Warrant of Commitment being read and filed, as the former) produced his Bail, *viz.* *John Jones*, *Zachariah Boord*, *Samuel Smith*, and *Thomas Wicks*, being all bound in the aforesaid Penalty for him to appear the first day of the next Term, and so *die in diem*, till the said Bail should be discharged. Upon my Lord *Howards*, Mr. *Wilmore*, and Mr. *Whittacre* refusing to pay such Fees as the Lieutenant demanded, he complained to the Court, but they told him he must take his course at Law; they could not oblige them to pay it unless they were willing: Upon which my L. *Howard* said, That he knew no such Fees due as was demanded, nor would he pay them, unless they appeared due upon Trial, and offered to give an Appearance; which being accepted, he nominated Mr. *Bagoodenough* his Attorney. The like did Mr. *Wilmore*. But Mr. *Whittacre* being an Attorney of the *Common-Pleas*, the proceedings against him were remitted to that Court. After this, *Samuel Wilson* was brought from the Gate-house, and bailed accordingly.

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